

### REMARKS

This responds to the Office Communication dated on 02/10/2011. Claims 1-22 are presently pending. Claims 1, 9, 15 and 21 are independent claims. Claims 20 was amended. Applicant submits that all of the pending claims are in condition for allowance. Reconsideration is requested in view of the following arguments

#### *Claim Rejections – 35 USC § 112*

Claim 20 was rejected for reciting a first and second leg more than once thus creating ambiguity. Applicant has amended claim 20 to recite first, second, third and further legs so there is no ambiguity between the established communication legs recited in claims 15 and 20. Withdrawal of the rejection is kindly requested.

#### *Claim Rejections – 35 USC § 103*

The Examiner stated that Claims 1-22 were rejected under 35 U.S.C. §103(a) as being obvious over Rabipour (U.S. 2004/0004957). Applicant submits that this rejection is improper and must be withdrawn.

Referring to chapter seven of the MPEP, §706.02(j) recites “Contents of a 35 U.S.C. 103 Rejection” provides that “35 U.S.C. 103 authorizes a rejection where, to meet the claim, it is necessary to modify a single reference or to combine it with one or more other references. After indicating that the rejection is under 35 U.S.C. 103, the examiner should set forth in the Office action:

(A) the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate,

(B) the difference or differences in the claim over the applied reference(s),

(C) the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter, and

(D) an explanation as to why the claimed invention would have been obvious to one of ordinary skill in the art at the time the invention was made\*\*.” Applicant submits that the

Examiner has failed to establish a *prima facie* case of obviousness with respect to any of the pending claims.

Referring to claim 1 of the present application, the Examiner has attempted to reject claim 1 as allegedly being obvious over Rabipour, however, it is clear from the Examiner's statements that all of the above-noted requirements of a proper 35 USC §103 rejection have not been properly set forth by the rejection.

Page 5 lines 14-22 of the Office Action dated February 10, 2011 admits that Rabipour fails to disclose a TFO connection or leg. The Examiner admitted this deficiency of Rabipour and noted that the summary paragraph of claim 25 of Rabipour (see paragraph [0022] of Rabipour), does not disclose any TFO connection. The Examiner then relied on paragraph [0024] of Rabipour, which provides details of a TFO connection being established between a first and second remote entity. However, this embodiment of Rabipour makes no reference to a non-TFO leg, and furthermore, paragraph [0024] of Rabipour discloses that an "end-to-end" TFO connection may be established between first and second remote entities based on in-band TFO messages that are received from the second remote entity. Therefore, the suggestion that any portion of Rabipour could be used to suggest "establishing a TFO call leg between the first and second network elements and establishing a non-TFO call leg between the second and third network elements after sending the substitute TFO acknowledgement message from the second network element", is without merit.

In addition to the above-noted deficiencies of Rabipour, claim 1 clearly recites that a substitute TFO acknowledgement message is sent from the second network element before the non-TFO call leg between the second and third network elements is established. In other words, the same "second" network element, which has one TFO leg between itself and the first network element and one non-TFO leg between itself and a third network element, is also responsible for sending a substitute TFO acknowledgement, not just any time, but before the non-TFO call leg is established between the second and third network elements (see claim 1).

The Examiner alleged that the alleged non-TFO connection disclosed in paragraph [0022] of Rabipour and the TFO connection disclosed in paragraph [0024] of Rabipour are combinable to arrive at the hybrid TFO call leg and non-TFO call leg communication setup disclosed in claim 1 of the present application. However, Applicant disagrees with the Examiner's reasoning

and submits that Referring again to paragraph [0022] of Rabipour, the “second broad aspect of the invention” recites that an end-to-end connection is established without any reference to a TFO call leg of any kind. Then a second connection is established with the first remote entity while the previously established end-to-end connection between the gateway and the second remote entity is already established. In this example of paragraph [0022] of Rabipour, an end-to-end connection is established between a first remote entity and a gateway and a second remote entity and a gateway. Thereafter, a new or second connection on one of the “end” connections is negotiated.

In paragraph [0024] of Rabipour, an end-to-end TFO connection is established between the first and second remote entities and the gateway without any modification. In summary, paragraph [0022] discloses modifying a portion of an established end-to-end communication path all of which is directed to non-TFO communications, and paragraph [0024] of Rabipour discloses an end-to-end communication path that is entirely based on TFO connections. Therefore, the notion that one end of the end-to-end communication path of Rabipour could be TFO-based on the other could be non-TFO-based is pure hindsight reasoning without any reference to the concrete examples disclosed at paragraphs [0022] and [0024] of Rabipour’s disclosure. Rabipour does not disclose a hybrid call leg setup as recited in claim 1 and similarly recited in claims 9, 15 and 21. If Rabipour did disclose such features then they would be described in detail in paragraphs [0032] through [0068] of Rabipour, which extends beyond the broad generalizations of the summary of Rabipour’s invention, as relied upon repeatedly by the Examiner.

Rabipour fails to disclose or suggest “sending a substitute TFO acknowledgement message from the second network element to the first network element if no TFO acknowledgement message is identified from the third network element; and establishing a TFO call leg between the first and second network elements and establishing a non-TFO call leg between the second and third network elements after sending the substitute TFO acknowledgement message from the second network element”, as recited in claim 1 and similarly recited in claims 9, 15 and 21.

For the reasons explained above, Applicant respectfully submits that Rabipour fails to address the claimed invention of independent claims 1, 9, 15 and 21. Claims 2-8, 10-14, 16-20,

and 22 are dependent on independent claims 1, 9, 15 and 21 respectively and incorporate all their limitations. For the reasons set forth above, Applicant believes that claims 1, 9, 15 and 21 are in condition for allowance and respectfully requests they and all claims depending there from be passed to allowance.

**CONCLUSION**

Applicants respectfully submit that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone the undersigned at any time.

	Respectfully submitted,
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